

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

BROOKE MARCOTTE)	
)	
v.)	Case No.: 4:24-CV-00108-SRB
)	
NEXSTAR BROADCASTING, INC.)	
<i>Defendant</i>)	

AMENDED COMPLAINT

COMES NOW Plaintiff Brooke Marcotte, by and through counsel, to allege the following for her Amended Complaint against Defendant Nexstar Broadcasting, Inc.

1. This is a civil case involving an employer who discriminated against an applicant for employment in violation of 42 U.S.C. § 1981, which guarantees that all persons in the United States have equal rights to make and enforce contracts, including contracts for employment, without regard to race.

2. Defendant **NEXSTAR BROADCASTING, INC.** (“Nexstar”) owns and operates WDAF-TV, Fox-4 KC (“Fox 4”), which is located in Kansas City, Missouri.

3. In February 2020, Plaintiff **BROOKE MARCOTTE** applied for a contractual employment position with Defendant, *i.e.*, the Weekday Evening Anchor position at Fox 4.

4. Defendant refused to hire Plaintiff because she is not African American/Black, thereby denying Plaintiff the equal right to engage in meaningful contract negotiations and denying Plaintiff the equal right to pursue a contract because of her race.

5. Plaintiff demands a trial by jury and seeks all available relief, including actual and punitive damages, costs, expenses, fees, interest, and equitable relief.

PARTIES

6. Plaintiff is an adult residing in Kansas. Plaintiff's race is Caucasian/White.

7. Defendant is a corporation registered and authorized to do business in Missouri. Defendant does continuous and substantial business in Missouri. Defendant has owned and operated Fox 4 since Fall, 2019.

VENUE

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because a substantial part of the acts or omissions giving rise to Plaintiff's claims occurred in Kansas City, Missouri, which is within this Court's judicial district.

9. Plaintiff applied for employment with Defendant in Kansas City, Missouri, and Defendant's decision not to hire Plaintiff for that job occurred in Kansas City, Missouri.

JURISDICTION

10. This Court has subject matter jurisdiction over this civil action pursuant to 28 U.S.C. § 1331 because Plaintiff's claims arise under federal law.

11. This Court has personal jurisdiction over Defendant because Defendant committed acts of discrimination in Missouri, in relation to the business it conducts in Missouri.

PARTICULARS

12. Defendant Nexstar acquired Fox 4 in Fall, 2019.

13. On or about October 21, 2019, a Weekday Evening Anchor at Fox 4 submitted her resignation.

14. The employee who resigned from the Weekday Evening Anchor position is African American/Black.

15. Nexstar posted a job opening for the Weekday Evening Anchor position at Fox 4.

16. Plaintiff applied for the Weekday Evening Anchor position at Fox 4.
17. On February 13, 2020, Plaintiff submitted her resume and cover letter to Sean McNamara. McNamara was employed by Nexstar as the News Director of Fox 4.
18. Plaintiff was qualified for the Weekday Evening Anchor position.
19. Plaintiff was able to perform all the required duties of the Weekday Evening Anchor position.
20. Nexstar's News Director McNamara decided not to hire Plaintiff for the Weekday Evening Anchor position.
21. When News Director McNamara told Plaintiff she was not being hired or considered for the position, McNamara said, "*You're not culturally what we're looking for.*"
22. When Plaintiff asked News Director McNamara to explain what he meant, McNamara became nervous and gave an explanation that did not make sense.
23. Upon information and belief, the Station Manager of Fox 4 was also involved in deciding not to hire or consider Plaintiff for the Weekday Evening Anchor position.
24. The News Director and Station Manager of Fox 4 were authorized by Nexstar to make hiring decisions for on-air positions, including the Weekday Evening Anchor position.
25. Defendant did not give Plaintiff an opportunity to read for the Weekday Evening Anchor position, which was an opportunity only offered to African American/Black candidates.
26. The Weekday Evening Anchor position remained vacant until June, 2020.
27. The person Nexstar hired to fill the Weekday Evening Anchor position is African American/Black.
28. Defendant's hiring decision for the Weekday Evening Anchor position was based on race, and Defendant limited its consideration to African American/Black candidates.

29. A Nexstar employee (“MM”) who is not African American/Black also expressed interest the Weekday Evening Anchor position. MM was not considered or selected for the position based on her race. MM is Asian American/Filipino.

30. On or about December 30, 2019, MM’s Agent spoke with News Director McNamara to express MM’s interest in the position. In response, McNamara said he was looking for a “*different demographic*” and said he needed “*diversity*.”

31. On or about January 16, 2020, MM spoke to News Director McNamara to express her interest in the position. In response, McNamara said she was the “*wrong minority*.”

32. News Director McNamara told a Fox 4 Anchor that he was only going to hire an African American/Black person for the Weekday Evening Anchor position.

33. McNamara told a Fox 4 Director-level employee that he would only consider or hire someone who is African American/Black for the Weekday Evening Anchor position.

34. Plaintiff is not African American/Black.

35. Plaintiff was not hired for the Weekday Evening Anchor position.

36. At all times alleged, the individuals alleged to have engaged in unlawful activity were agents of Defendant acting within the scope and course of their agency, were taking actions authorized by virtue of their position with Defendant, or Defendant ratified their actions. Therefore, Defendant is liable for the unlawful and wrongful conduct alleged herein.

COUNT I
DISCRIMINATION
42 U.S.C. § 1981

37. Plaintiff incorporates by reference all other paragraphs in this pleading.

38. Plaintiff applied for employment with Defendant.

39. Plaintiff applied for the Fox 4 Weekday Evening Anchor position with Defendant.

40. The Weekday Evening Anchor position Plaintiff applied for was a position that had contractual rights, interests, and obligations with Defendant as a contract employee.

41. Defendant did not sincerely consider Plaintiff for the Weekday Evening Anchor position. Defendant would have sincerely considered Plaintiff for the Weekday Evening Anchor position but for Plaintiff's race.

42. Defendant did not give Plaintiff the opportunity to read for the Weekday Evening Anchor position. Defendant would have given Plaintiff the opportunity to read for the position but for Plaintiff's race.

43. Defendant did not extend Plaintiff the same opportunities it extended to other candidates who applied for the position who were African American/Black. Plaintiff would have extended the same opportunities it extended to other candidates who applied for the position but for Plaintiff's race.

44. Defendant did not hire Plaintiff for the Weekday Evening Anchor position. Defendant would have hired Plaintiff but for Plaintiff's race.

45. Defendant's conduct alleged above directly caused Plaintiff to suffer damages.

46. Defendant's conduct was malicious or recklessly indifferent to Plaintiff's right to be free from discrimination in employment and in negotiating contractual relationships.

WHEREFORE, Plaintiff prays for Judgment against Defendant, finding Defendant discriminated against her in violation of 42 U.S.C. § 1981 and awarding Plaintiff actual and punitive damages, costs, fees, expenses, interest, and all other legal and equitable relief the Court may grant.

Respectfully submitted by:

/s/ Kenneth D. Kinney

Kenneth D. Kinney – MO #67435

Thomas F. Ralston – MO #61052

RALSTON KINNEY, LLC

4717 Grand Avenue, Suite 300

Kansas City, MO 64112

TEL: (816) 298-0086

FAX: (816) 298-9455

Email: ken@rklawllc.com

Email: tom@rklawllc.com

/s/ Dennis E. Egan

Dennis E. Egan – MO #27449

THE POPHAM LAW FIRM, PC

712 Broadway, Suite 100

Kansas City, MO 64105

Telephone: (816) 221-2288

Fax: (816) 221-3999

Email: degan@popham.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2024, a PDF copy of the foregoing was electronically filed through the Court's ECF/CM system, which will serve Defendants by emailing notice and a copy to its attorney(s) of record. Further, a PDF copy was emailed to Defendant's attorney:

Stacy Bunck (stacy.bunck@ogletree.com)

/s/ Kenneth D. Kinney

Kenneth D. Kinney – MO #67435